UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

--X Case No.

WENDY IRIS RIVERA,

Plaintiff,

COMPLAINT

-against-

PLAINTIFF DEMANDS A TRIAL BY JURY

CAMPANIA BRICK OVEN PIZZA, LTD., and MICHAEL PETOSA, *Individually*,

Defendants.

--X

Plaintiff, WENDY IRIS RIVERA, by her attorneys, LAW OFFICE OF YURIY MOSHES, P.C., hereby complains of the Defendants, upon information and belief, as follows:

NATURE OF THE CASE

1. Plaintiff brings this action against Defendants pursuant to the Fair Labor Standards Act, 29 U.S.C. §201 *et seq.* ("FLSA") and the New York State Labor Law, Articles 6 & 19 ("NYLL") and seeks to recover unpaid back wages, an additional amount as liquidated damages, and reasonable attorneys' fees and costs, due to Defendants' **failure to pay earned wages** for all work she performed as an employee of Defendants and for then **terminating Plaintiff's employment in retaliation for complaining of Defendants' failure to pay wages**.

2. Plaintiff also complains pursuant to the Wage Theft Prevention Act, New York Labor Law § 195, *et seq.*, and seeks to redress the damages she has suffered as a result of Defendants' **failure to give her written notice of wage rates**, including, inter alia, her rate of pay.

JURISDICTION AND VENUE

3. Jurisdiction of this Court is proper under 29 U.S.C. §216(b) and 28 U.S.C. §§1331 and 1343.

4. The Court has supplemental jurisdiction over the claims of Plaintiff brought under state law pursuant to 28 U.S.C. §1367.

5. Venue is proper in this district pursuant to 28 U.S.C. §1391(b) as it is a judicial district in which a substantial part of the events or omissions giving rise to the claims occurred.

PARTIES

6. That at all times relevant hereto, Plaintiff WENDY IRIS RIVERA ("RIVERA") was a resident of the State of New York and County of Richmond.

7. That at all times relevant hereto, Defendant CAMPANIA BRICK OVEN PIZZA, LTD. ("CAMPANIA") was a domestic business corporation, duly organized and existing under, and by virtue of, the laws of the State of New York, with its principal place of business located at 9824 Fourth Avenue, Brooklyn, New York 11209.

8. That at all times relevant hereto, upon information and belief, Defendant CAMPANIA had eleven (11) or more employees.

9. That at all times relevant hereto, Defendant CAMPANIA owned, controlled, and maintained a restaurant located at 240 Page Avenue, Staten Island, New York 10307 ("Staten Island location").

10. That at all times relevant hereto, Plaintiff RIVERA was an employee of Defendant CAMPANIA and worked at the Staten Island location.

11. That at all times relevant hereto, Defendant MICHAEL PETOSA ("PETOSA") was an employee of Defendant CAMPANIA, holding the position of "Manager."

12. That at all times relevant hereto, Defendant PETOSA was Plaintiff RIVERA's supervisor and had supervisory authority over Plaintiff RIVERA.

13. That at all times relevant hereto, Defendant CAMPANIA and Defendant PETOSA are collectively referred to herein as "Defendants."

14. At all times relevant hereto, Defendants had the power to, and were responsible for, determining the wages to be paid to Plaintiff RIVERA.

15. At all times relevant hereto, Defendants had the power to, and did in fact, establish the terms of Plaintiff RIVERA's employment, including Plaintiff RIVERA's schedule and rate of pay.

16. The FLSA defines "employer" to include any person acting directly or indirectly in the interest of an employer in relation to an employee and an employee is anyone who is suffered or permitted to work. As a result, including as further described below, all Defendants are liable as "employers" under the FLSA.

17. Defendants are also jointly and severally liable as joint employers under 29 C.F.R. §791.2 for the violations complained of herein.

18. Upon information and belief, Defendants grossed more than $500,000 in the past fiscal year, and further, during Plaintiff RIVERA's employment with Defendants, she routinely engaged activities which facilitate or relate to interstate or foreign commerce while on the job.

MATERIAL FACTS

19. On or about September 23, 2016, Plaintiff RIVERA began working for Defendants as a "Waitress."

20. Throughout her employment, Plaintiff RIVERA was an exemplary employee, was never

disciplined, and always received compliments for her work performance.

21. While Defendants did not maintain any system of recording hours actually worked by their employees, Defendants maintained schedules for their employees regarding the times Defendants mandated them to work.

22. Nevertheless, throughout Plaintiff RIVERA's employment with Defendants, Defendants wholly failed to pay Plaintiff RIVERA the minimum wage and overtime rate as required by law, in violation of the FLSA and NYLL.

23. In fact, Defendants willfully failed to compensate Plaintiff RIVERA for any of the hours she worked.

24. Even worse, Defendants thereafter terminated Plaintiff RIVERA's employment solely in retaliation for complaining of Defendants' complete failure to comply with the FLSA and NYLL and pay her wages.

25. Furthermore, Defendants did not provide Plaintiff RIVERA with any sort of written notice regarding: her regular rate of pay, overtime rate of pay, how she was to be paid, her "regular payday," the official name of the employer and any other names used for business, the address and phone number of the employer's main office or principal location, nor, allowances taken as part of the minimum wage (including, inter alia, tips).

26. Insofar as is relevant, from September 23, 2016 to December 31, 2016, the New York State minimum wage was $9.00 per hour. From December 31, 2016 to January 25, 2017, the New York State minimum wage was $11.00 per hour for New York City employers with eleven (11) or more employees.

27. From on or about September 23, 2016 through on or about September 24, 2016, Plaintiff RIVERA worked nine (9) hours. Even though the New York State minimum wage was

$9.00 per hour, Defendants wholly failed to pay Plaintiff RIVERA any wages for any of the hours that she worked. Accordingly, Defendants underpaid Plaintiff RIVERA **$81.00** ($9.00/hr x 9 hrs) for the hours she worked this week.

28. From on or about September 25, 2016 through on or about October 1, 2016, Plaintiff RIVERA worked thirty-five (35) hours. Even though the New York State minimum wage was $9.00 per hour, Defendants wholly failed to pay Plaintiff RIVERA any wages for any of the hours that she worked. Accordingly, Defendants underpaid Plaintiff RIVERA **$315.00** ($9.00/hr x 35 hrs) for the hours she worked this week.

29. From on or about October 2, 2016 through on or about October 8, 2016, Plaintiff RIVERA worked forty-eight and a half (48.5) hours. Even though the New York State minimum wage was $9.00 per hour, Defendants wholly failed to pay Plaintiff RIVERA any wages for any of the hours that she worked. Accordingly, Defendants underpaid Plaintiff RIVERA **$360.00** ($9.00/hr x 40 hrs) for all regular non-overtime hours (i.e., the first 40 hours) she worked this week. Further, Plaintiff RIVERA worked eight and a half (8.5) hours of overtime. The overtime rate during this week was one and one-half times the minimum wage ($13.50/hr.). Accordingly, Defendants underpaid Plaintiff RIVERA **$114.75** for all overtime hours worked ($13.50/hr x 8.5 OT hrs.).

30. From on or about October 9, 2016 through on or about October 15, 2016, Plaintiff RIVERA worked forty-two and a half (42.5) hours. Even though the New York State minimum wage was $9.00 per hour, Defendants wholly failed to pay Plaintiff RIVERA any wages for any of the hours that she worked. Accordingly, Defendants underpaid Plaintiff RIVERA **$360.00** ($9.00/hr x 40 hrs) for all regular non-overtime hours (i.e., the first 40 hours) she worked this week. Further, Plaintiff RIVERA worked two and a half

(2.5) hours of overtime. The overtime rate during this week was one and one-half times the minimum wage ($13.50/hr.). Accordingly, Defendants underpaid Plaintiff RIVERA **$33.75** for all overtime hours worked ($13.50/hr x 2.5 OT hrs.).

31. From on or about October 16, 2016 through on or about October 22, 2016, Plaintiff RIVERA worked thirty-five (35) hours. Even though the New York State minimum wage was $9.00 per hour, Defendants wholly failed to pay Plaintiff RIVERA any wages for any of the hours that she worked. Accordingly, Defendants underpaid Plaintiff RIVERA **$315.00** ($9.00/hr x 35 hrs) for all regular non-overtime hours (i.e., the first 40 hours) she worked this week.

32. From on or about October 23, 2016 through on or about October 29, 2016, Plaintiff RIVERA worked forty-seven and a half (47.5) hours. Even though the New York State minimum wage was $9.00 per hour, Defendants wholly failed to pay Plaintiff RIVERA any wages for any of the hours that she worked. Accordingly, Defendants underpaid Plaintiff RIVERA **$360.00** ($9.00/hr x 40 hrs) for all regular non-overtime hours (i.e., the first 40 hours) she worked this week. Further, Plaintiff RIVERA worked seven and a half (7.5) hours of overtime. The overtime rate during this week was one and one-half times the minimum wage ($13.50/hr.). Accordingly, Defendants underpaid Plaintiff RIVERA **$101.25** for all overtime hours worked ($13.50/hr x 7.5 OT hrs.).

33. From on or about October 30, 2016 through on or about November 5, 2016, Plaintiff RIVERA worked forty-two and a half (42.5) hours. Even though the New York State minimum wage was $9.00 per hour, Defendants wholly failed to pay Plaintiff RIVERA any wages for any of the hours that she worked. Accordingly, Defendants underpaid Plaintiff RIVERA **$360.00** ($9.00/hr x 40 hrs) for all regular non-overtime hours (i.e., the

first 40 hours) she worked this week. Further, Plaintiff RIVERA worked two and a half (2.5) hours of overtime. The overtime rate during this week was one and one-half times the minimum wage ($13.50/hr.). Accordingly, Defendants underpaid Plaintiff RIVERA **$33.75** for all overtime hours worked ($13.50/hr x 2.5 OT hrs.).

34. From on or about November 6, 2016 through on or about November 12, 2016, Plaintiff RIVERA worked forty-one (41) hours. Even though the New York State minimum wage was $9.00 per hour, Defendants wholly failed to pay Plaintiff RIVERA any wages for any of the hours that she worked. Accordingly, Defendants underpaid Plaintiff RIVERA **$360.00** ($9.00/hr x 40 hrs) for all regular non-overtime hours (i.e., the first 40 hours) she worked this week. Further, Plaintiff RIVERA worked one (1) hour of overtime. The overtime rate during this week was one and one-half times the minimum wage ($13.50/hr.). Accordingly, Defendants underpaid Plaintiff RIVERA **$13.50** for all overtime hours worked ($13.50/hr x 1 OT hrs.).

35. From on or about November 13, 2016 through on or about November 19, 2016, Plaintiff RIVERA worked forty-two and a half (42.5) hours. Even though the New York State minimum wage was $9.00 per hour, Defendants wholly failed to pay Plaintiff RIVERA any wages for any of the hours that she worked. Accordingly, Defendants underpaid Plaintiff RIVERA **$360.00** ($9.00/hr x 40 hrs) for all regular non-overtime hours (i.e., the first 40 hours) she worked this week. Further, Plaintiff RIVERA worked two and a half (2.5) hours of overtime. The overtime rate during this week was one and one-half times the minimum wage ($13.50/hr.). Accordingly, Defendants underpaid Plaintiff RIVERA **$33.75** for all overtime hours worked ($13.50/hr x 2.5 OT hrs.).

36. From on or about November 20, 2016 through on or about November 26, 2016, Plaintiff

RIVERA worked forty (40) hours. Even though the New York State minimum wage was $9.00 per hour, Defendants wholly failed to pay Plaintiff RIVERA any wages for any of the hours that she worked. Accordingly, Defendants underpaid Plaintiff RIVERA **$360.00** ($9.00/hr x 40 hrs) for all regular non-overtime hours (i.e., the first 40 hours) she worked this week.

37. From on or about November 27, 2016 through on or about December 3, 2016, Plaintiff RIVERA worked thirty-five (35) hours. Even though the New York State minimum wage was $9.00 per hour, Defendants wholly failed to pay Plaintiff RIVERA any wages for any of the hours that she worked. Accordingly, Defendants underpaid Plaintiff RIVERA **$315.00** ($9.00/hr x 35 hrs) for all regular non-overtime hours (i.e., the first 40 hours) she worked this week.

38. From on or about December 4, 2016 through on or about December 10, 2016, Plaintiff RIVERA worked forty-seven and a half (47.5) hours. Even though the New York State minimum wage was $9.00 per hour, Defendants wholly failed to pay Plaintiff RIVERA any wages for any of the hours that she worked. Accordingly, Defendants underpaid Plaintiff RIVERA **$360.00** ($9.00/hr x 40 hrs) for all regular non-overtime hours (i.e., the first 40 hours) she worked this week. Further, Plaintiff RIVERA worked seven and a half (7.5) hours of overtime. The overtime rate during this week was one and one-half times the minimum wage ($13.50/hr.). Accordingly, Defendants underpaid Plaintiff RIVERA **$101.25** for all overtime hours worked ($13.50/hr x 7.5 OT hrs.).

39. From on or about December 11, 2016 through on or about December 17, 2016, Plaintiff RIVERA worked sixty (60) hours. Even though the New York State minimum wage was $9.00 per hour, Defendants wholly failed to pay Plaintiff RIVERA any wages for any of

the hours that she worked. Accordingly, Defendants underpaid Plaintiff RIVERA **$360.00** ($9.00/hr x 40 hrs) for all regular non-overtime hours (i.e., the first 40 hours) she worked this week. Further, Plaintiff RIVERA worked twenty (20) hours of overtime. The overtime rate during this week was one and one-half times the minimum wage ($13.50/hr.). Accordingly, Defendants underpaid Plaintiff RIVERA **$270.00** for all overtime hours worked ($13.50/hr x 20 OT hrs.).

40. From on or about December 18, 2016 through on or about December 24, 2016, Plaintiff RIVERA worked thirty-five (35) hours. Even though the New York State minimum wage was $9.00 per hour, Defendants wholly failed to pay Plaintiff RIVERA any wages for any of the hours that she worked. Accordingly, Defendants underpaid Plaintiff RIVERA **$315.00** ($9.00/hr x 35 hrs) for all regular non-overtime hours (i.e., the first 40 hours) she worked this week.

41. From on or about December 25, 2016 through on or about December 31, 2016, Plaintiff RIVERA worked sixty-three and a half (63.5) hours. Even though the New York State minimum wage was $9.00 per hour, Defendants wholly failed to pay Plaintiff RIVERA any wages for any of the hours that she worked. Accordingly, Defendants underpaid Plaintiff RIVERA **$360.00** ($9.00/hr x 40 hrs) for all regular non-overtime hours (i.e., the first 40 hours) she worked this week. Further, Plaintiff RIVERA worked twenty-three and a half (23.5) hours of overtime. The overtime rate during this week was one and one-half times the minimum wage ($13.50/hr.). Accordingly, Defendants underpaid Plaintiff RIVERA **$317.25** for all overtime hours worked ($13.50/hr x 23.5 OT hrs.).

42. From on or about January 1, 2017 through on or about January 7, 2017, Plaintiff RIVERA worked forty-five (45) hours. Even though the New York State minimum wage was

$11.00 per hour, Defendants wholly failed to pay Plaintiff RIVERA any wages for any of the hours that she worked. Accordingly, Defendants underpaid Plaintiff RIVERA **$440.00** ($11.00/hr x 40 hrs) for all regular non-overtime hours (i.e., the first 40 hours) she worked this week. Further, Plaintiff RIVERA worked five (5) hours of overtime. The overtime rate during this week was one and one-half times the minimum wage ($16.50/hr.). Accordingly, Defendants underpaid Plaintiff RIVERA **$82.50** for all overtime hours worked ($16.50/hr x 5 OT hrs.).

43. From on or about January 8, 2017 through on or about January 14, 2017, Plaintiff RIVERA worked thirty-five and a half (35.5) hours. Even though the New York State minimum wage was $11.00 per hour, Defendants wholly failed to pay Plaintiff RIVERA any wages for any of the hours that she worked. Accordingly, Defendants underpaid Plaintiff RIVERA **$390.50** ($11.00/hr x 35.5 hrs) for all regular non-overtime hours (i.e., the first 40 hours) she worked this week.

44. From on or about January 15, 2017 through on or about January 17, 2017, Plaintiff RIVERA worked twenty-five and a half (25.5) hours. Even though the New York State minimum wage was $11.00 per hour, Defendants wholly failed to pay Plaintiff RIVERA any wages for any of the hours that she worked. Accordingly, Defendants underpaid Plaintiff RIVERA **$280.50** ($11.00/hr x 25.5 hrs) for all regular non-overtime hours (i.e., the first 40 hours) she worked this week.

45. **Thus, Plaintiff RIVERA is owed a total of $7,153.25 in unpaid wages for work performed for Defendants.**

46. Furthermore, because Defendants failed to give Plaintiff RIVERA proper notice pursuant to the Wage Theft Prevention Act throughout the entirety of her employment, she is

entitled to **$5,000.00** in damages, plus costs and attorneys' fees.

47. Also disturbing is that Defendants ultimately terminated Plaintiff RIVERA's employment solely in retaliation for complaining about Defendants' failure to pay Plaintiff RIVERA her earned wages, in violation of the FLSA and NYLL.

48. By way of example, in or around December 2016, since Plaintiff RIVERA had already worked many weeks without receiving any pay, Plaintiff RIVERA asked Defendant PETOSA when she would be paid her wages and given a W-4 form, to which Defendant PETOSA responded, "you make more money from just tips." However, while Plaintiff RIVERA did receive some nominal tips, this was wholly irrelevant to Defendants' obligation to pay Plaintiff RIVERA her proper wages.

49. In or around early-January 2017, as Defendants had still wholly failed to compensate Plaintiff RIVERA for any of the hours that she worked, she once again pleaded with Defendant PETOSA for her earned wages and a W-4 form, to which Defendant PETOSA again responded, "you make more from tips."

50. Finally, on or about January 23, 2017, Plaintiff RIVERA complained to Defendant PETOSA about Defendants' complete and utter failure to comply with the law and compensate her for any of the hours that she worked.

51. Then, only two (2) days later, **on or about January 25, 2017, without any warning, Defendant PETOSA suddenly terminated Plaintiff RIVERA's employment** because "between you asking to be paid and asking for a W-4 form, it's just too much drama."

52. Thus, based on the temporal proximity and Defendant PETOSA's admission, it is clear that on or about January 25, 2017, Defendants terminated Plaintiff RIVERA's employment in retaliation for complaining about Defendants' failure to comply with the

FLSA and NYLL.

53. Defendants obviously did not like the fact that Plaintiff RIVERA was complaining about Defendants' failure to compensate her, and thus decided to terminate her employment in retaliation.

54. But for the fact that Plaintiff RIVERA complained of Defendants' failure to comply with the FLSA and NYLL, Defendants would not have terminated her employment.

55. Defendants violated the FLSA and NYLL by retaliating against Plaintiff RIVERA for complaining of Defendants' failure to pay earned wages.

56. In addition, pursuant to NYLL § 191(3), "If employment is terminated, the employer shall pay the wages not later than the regular pay day for the pay period during which the termination occurred, as established in accordance with the provisions of this section." However, **Defendants remain in violation of the law and have still failed to pay Plaintiff RIVERA any of her earned wages**.

57. Throughout all relevant time periods, upon information and belief, Defendants failed to post and/or to keep posted a notice explaining the minimum wage and overtime pay rights provided by the FLSA and the NYLL.

58. Throughout all relevant time periods, upon information and belief, Defendants also failed to maintain accurate and sufficient time records.

59. Defendants' failure to pay Plaintiff RIVERA her proper earned wages required by law was willful. Furthermore, Defendants' failure to give Plaintiff RIVERA proper notice pursuant to the Wage Theft Prevention Act was also willful.

60. Plaintiff RIVERA's performance was, upon information and belief, above average during the course of her employment with Defendants.

61. As a result of the retaliatory termination, Plaintiff RIVERA feels extremely humiliated, degraded, victimized, embarrassed, and emotionally distressed.

62. As a result of the acts and conduct complained of herein, Plaintiff RIVERA has suffered the loss of income, the loss of a salary, bonuses, benefits and other compensation which such employment entails.

63. As a result of the above, Plaintiff RIVERA has been damaged in an amount in excess of the jurisdiction of the Court.

64. Defendants' conduct has been malicious, willful, outrageous, and conducted with full knowledge of the law. As such, Plaintiff RIVERA demands Liquidated and Punitive Damages as against both Defendants, jointly and severally.

AS A FIRST CAUSE OF ACTION
VIOLATION OF THE FAIR LABOR STANDARDS ACT
FAILURE TO MAKE TIMELY PAYMENT OF WAGES

65. Plaintiff repeats and realleges each and every paragraph above as if said paragraph was more fully set forth herein at length.

66. Defendants failed to pay Plaintiff timely wages as required by the Fair Labor Standards Act, 29 U.S.C. §201 *et seq.*, and its implementing regulations.

67. Defendants' failure to pay the required timely wages was willful within the meaning of 29 U.S.C. §255.

68. Defendants' failure to comply with the FLSA caused Plaintiff to suffer loss of wages.

AS A SECOND CAUSE OF ACTION
VIOLATION OF THE NEW YORK LABOR LAW
FAILURE TO MAKE TIMELY PAYMENT OF WAGES

69. Plaintiff repeats and realleges each and every allegation made in the above paragraphs of

this complaint as if same were set forth herein fully at length.

70. Defendants failed to pay Plaintiff "not less frequently than semi-monthly, on regular pay days designated in advance by the employer," in violation of New York Labor Law §191(1)(d).

71. As a consequence, under NYLL §198, Plaintiff is entitled to (a) the full amount of underpayment, (b) attorneys' fees and costs, (c) prejudgment interest, and (d) an additional amount as liquidated damages equal to one hundred percent of the total amount of the wages found to be due.

AS A THIRD CAUSE OF ACTION
VIOLATION OF THE FAIR LABOR STANDARDS ACT
MINIMUM WAGE

72. Plaintiff repeats and realleges each and every allegation made in the above paragraphs of this complaint as if same were set forth herein fully at length.

73. Defendants willfully employed Plaintiff in the afore-mentioned enterprise and failed to compensate Plaintiff at the required minimum hourly rate for her employment.

74. Defendants' failure to pay Plaintiff the mandated minimum hourly pay in accordance with the FLSA, was a direct violation of the FLSA, specifically 29 U.S.C. §206.

75. Defendants' failure to pay proper minimum wages for each hour worked was willful within the meaning of 29 U.S.C. §255.

76. Defendants' failure to comply with the FLSA caused Plaintiff to suffer loss of wages.

AS A FOURTH CAUSE OF ACTION
VIOLATION OF NEW YORK LABOR LAW § 652(1)
MINIMUM WAGE

77. Plaintiff repeats and realleges each and every allegation made in the above paragraphs of

this complaint as if same were set forth herein fully at length.

78. Plaintiff was an employee of Defendants within the meaning of the NYLL.

79. Defendants failed to pay Plaintiff the required minimum hourly wage rate for one hour of work.

80. Defendants violated Plaintiff's right to minimum wage pay under § 652(1); New York Labor Law, Article 19.

81. Defendants also violated New York's Minimum Wage Order of 12 NYCRR Part No. 142.

82. On account of such violations, Defendants are liable to Plaintiff for actual, statutory and liquidated damages.

83. Defendants' actions were willful.

84. Defendants' failure to comply with the New York State Labor Law and New York's Minimum Wage Order caused Plaintiff to suffer loss of wages.

AS A FIFTH CAUSE OF ACTION
VIOLATION OF THE FAIR LABOR STANDARDS ACT
OVERTIME

85. Plaintiff repeats and realleges each and every paragraph above as if said paragraph was more fully set forth herein at length.

86. Defendants willfully employed Plaintiff for workweeks longer than forty (40) hours and failed to compensate Plaintiff for her employment in excess of forty (40) hours per week at a rate of at least one-and-one-half times the rate at which she was employed.

87. Defendants failed to pay overtime wages to Plaintiff as required by the FLSA, 29 U.S.C. § 201, *et seq.*, and its implementing regulations.

88. Defendants' failure to pay Plaintiff overtime pay in accordance with the FLSA is a direct

violation of the FLSA, specifically 29 U.S.C. § 207.

89. Defendants' failure to pay proper overtime wages for each hour worked over forty (40) per week was willful within the meaning of 29 U.S.C. § 255.

90. Defendants' failure to comply with the FLSA has caused Plaintiff to suffer a loss of wages.

AS A SIXTH CAUSE OF ACTION
VIOLATION OF NEW YORK LABOR LAW
OVERTIME

91. Plaintiff repeats and realleges each and every paragraph above as if said paragraph was more fully set forth herein at length.

92. Defendants employed Plaintiff within the meaning of NYLL §§ 2, 190, and 651.

93. Defendants failed to pay Plaintiff a premium for hours worked in excess of forty (40) hours per week, in violation of NYLL § 170.

94. Defendants have violated Plaintiff's rights to overtime pay under Title 12 NYCRR 142-2.2.

95. Defendants' failure to comply with the NYLL overtime requirements has caused Plaintiff to suffer loss of wages and interest thereon.

96. Defendants' failure to pay proper overtime wages is willful.

97. Due to Defendants' NYLL violations, Plaintiff is entitled to recover from Defendants her unpaid overtime wages in an amount to be determined at trial, plus an amount equal to 100% of Plaintiff's unpaid overtime wages in the form of liquidated damages, as well as attorneys' fees and costs of the action, including pre- and post- judgment interest, pursuant to NYLL §§ 198 and 663(1).

AS A SEVENTH CAUSE OF ACTION
VIOLATION OF THE FAIR LABOR STANDARDS ACT
RETALIATION

98. Plaintiff repeats and realleges each and every allegation made in the above paragraphs of this complaint as if same were set forth herein fully at length.

99. 29 U.S.C. §215 prohibits an employer from discriminating against an employee for exercising rights under the FLSA. Specifically, it is illegal to discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this chapter, or has testified or is about to testify in any such proceeding, or has served or is about to serve on an industry committee. 29 U.S.C. §215.

100. Defendants retaliated against Plaintiff because she complained about Defendants not paying her rightfully earned wages.

AS AN EIGHTH CAUSE OF ACTION
VIOLATION OF THE NEW YORK LABOR LAW
RETALIATION

101. Plaintiff repeats and realleges each and every allegation made in the above paragraphs of this complaint as if same were set forth herein fully at length.

102. Plaintiff made complaints to Defendants about practices that violate the New York Labor Law, including but not limited to, Defendants' failure to pay earned wages and overtime.

103. After receiving these complaints, Defendants retaliated against Plaintiff by terminating her employment.

104. By retaliating against Plaintiff for her complaints about violations of the New York Labor Law, Defendants violated New York Labor Law §215, which states that, "No employer ... shall discharge, penalize, or in any other manner discriminate against an employee

because such employee has made a complaint to his employer ... that employer has violated any provision of [the Labor Law]."

105. Due to Defendants' violation of New York Labor Law §215, Plaintiff is entitled to recover all appropriate legal and equitable relief, including but not limited to, compensatory damages, liquidated damages, attorneys' fees and costs.

AS A NINTH CAUSE OF ACTION
VIOLATIONS OF THE WAGE THEFT PREVENTION ACT

106. Plaintiff repeats and realleges each and every allegation made in the above paragraphs of this complaint as if same were set forth herein fully at length.

107. Defendants failed to give Plaintiff written notice regarding: her regular rate of pay, overtime rate of pay, how she was to be paid, her "regular payday," the official name of the employer and any other names used for business, the address and phone number of the employer's main office or principal location, nor, allowances taken as part of the minimum wage (including, inter alia, tips), in violation of NYLL § 195.

108. As this occurred for the entirety of Plaintiff's employment, she is entitled to $5,000.00, the maximum amount available under the law.

AS A TENTH CAUSE OF ACTION
VIOLATION OF NEW YORK LABOR LAW
EMPLOYEE RECORDS

109. Plaintiff repeats and realleges each and every allegation made in the above paragraphs of this complaint as if same were set forth herein fully at length.

110. Defendants failed to keep employee-specific records documenting, *inter alia*, actual hours worked in each week, in violation of NYLL §661 and 12 NYCRR 142-2.6.

JURY DEMAND

111. Plaintiff requests a jury trial on all issues to be tried.

WHEREFORE, Plaintiff respectfully requests a judgment against Defendants:

A. Declaring that Defendants engaged in unlawful employment practices prohibited by the FLSA and the NYLL by failing to pay Plaintiff her earned wages, minimum wage, and overtime wages, and by retaliating against Plaintiff for complaining of Defendants' failure to pay minimum wage and overtime compensation;

B. Declaring that Defendants engaged in unlawful employment practices prohibited by the New York State Labor Law by failing to give proper notice pursuant to the Wage Theft Prevention Act;

C. Awarding damages to Plaintiff for all lost wages and benefits resulting from Defendants' unlawful retaliation and to otherwise make her whole for any losses suffered as a result of such unlawful employment practices;

D. Awarding Plaintiff compensatory damages for mental, emotional and physical injury, distress, pain and suffering and injury to her reputation in an amount to be proven;

E. Awarding Plaintiff punitive damages;

F. Awarding Plaintiff liquidated damages as a result of Defendants' willful failure to pay her earned wages;

G. Awarding Plaintiff attorneys' fees, costs, and expenses incurred in the prosecution of the action; and

H. Awarding Plaintiff such other and further relief as the Court may deem equitable, just and proper to remedy Defendants' unlawful employment practices.

Dated: New York, New York
April 6, 2017

LAW OFFICE OF
YURIY MOSHES, P.C.

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